

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

WILLIAM and KIMBERLY WATSON,
Debtors.

Case No. 92-58372-MM
Chapter 7

KENNETH J. PETERSON,
Plaintiff,

Adversary No. 93-5140

vs.

**MEMORANDUM DECISION RE
DETERMINATION OF RIGHT TO
JURY TRIAL**

WILLIAM and KIMBERLY WATSON,
Defendants.

BACKGROUND:

The lawsuit is a shareholder dispute between plaintiff Peterson and the debtor, who are former business associates. The plaintiff alleges that the debtor: (1) misapplied and misappropriated corporate assets, (2) fraudulently induced the plaintiff to invest capital in the debtor's corporation, (3) intentionally interfered with a contractual agent/client relationship between the plaintiff and a third party who purchased a life insurance policy from the plaintiff, and (4) breached the terms of a promissory note for \$5,000. There is a pending state court lawsuit based on the same circumstances. The court granted a motion for abstention filed by Jackson National Life Insurance Co., a co-defendant, declining to hear the plaintiff's claim that Jackson National, along with the debtor, intentionally interfered with plaintiff's contractual relationship with a third party. The plaintiff has timely made a jury demand.

RECOMMENDATION:

Jury demand stricken.

Claims for relief against debtor:

1. Breach of contract;
2. Fraudulent interference with contract;
3. Declaratory relief (re: stock ownership);
4. Fraud;
5. Conversion;
6. Dischargeability.

Analysis:

A. Preliminary Matter: Determination of Core/Non-core Status

Although many of the claims asserted in this lawsuit may be construed as non-core under the 9th Circuit's analysis in Cinematronics, 916 F.2d 1444 (9th Cir. 1990) and Castlerock Properties, 781 F.2d 159 (9th Cir. 1986), the parties do not dispute that this is a core proceeding. Dischargeability actions are core matters. 28 U.S.C. § 157(b)(2)(I). That a proceeding is deemed core or non-core does not establish the right to a jury trial. American Universal Ins. v. Pugh, 821 F.2d 1352, 1355 (9th Cir. 1987). That determination is based on the nature of the claim for relief. Id. If there is a right to a jury trial, the bankruptcy court may conduct a jury trial in a core proceeding. In re Interbank Mortgage Corp., 128 BR 269 (N.D. Cal. 1991)(J. Conti); In re Marshland Development, Inc., 129 BR 626, 629 (Bankr. N.D. Cal. 1991).

B. Right to Jury Trial Under 7th Amendment

A party is entitled to a jury trial in the bankruptcy court if that party is entitled to a jury trial under the 7th Amendment. Granfinanciera, S.A. v. Nordberg, 492 U.S. 33, 41 (1989). That determination requires a 3-step test:

1. Whether there was a right to a jury trial in 18th century England;
2. Whether the matter is legal or equitable in nature; and
3. Whether the matter involves private rights or public rights.

In re Marshland Development, Inc., 129 BR at 628. All three factors must be present for there

1 to be a right to a jury trial.

2 A party would have had a right to a jury trial in an action based on breach of contract, fraud, or
3 conversion in 18th century England. 5 Moore's Federal Practice ¶ 38.11[5] (2d ed. 1993).

4 The second prong of the test, whether the matter is legal or equitable in nature, is the primary
5 question. A dischargeability proceeding has a dual nature. **In re Hooper, 112 BR 1009, 1012 (BAP
6 9th Cir. 1990)**. It is often a proceeding to establish the liability for and the amount of a debt arising from
7 fraud, breach of fiduciary duty, or willful and malicious conduct, as well as to determine the
8 dischargeability of the debt. Id. As such, the proceeding can often be legal in nature. Id. However, a
9 proceeding solely to determine the dischargeability of a debt is equitable in nature, and a party is not
10 entitled to a jury trial on that issue. Id.; **In re Perry, 111 BR 861, 866-67 (Bankr. C.D. Cal. 1990)**(J.
11 Zurzolo). The question arises whether the plaintiff is entitled to a jury trial on the other claims. In the
12 interest of judicial economy, a plaintiff is not entitled to a jury trial on the integrally related issues of
13 liability and damages. **In re Choi, 135 BR 649, 651 (Bankr. N.D. Cal. 1991)**. Although the
14 determination of dischargeability is within the exclusive jurisdiction of the bankruptcy court and is to be
15 tried without a jury, the court sitting in equity also has broad powers to grant complete relief. Id.
16 "[A]llowing the bankruptcy judge to settle both the dischargeability of the debt and the amount of the
17 money judgment accords with the 'rule generally followed by courts of equity that having jurisdiction of
18 the parties to controversies brought before them, they will decide all matters in dispute and decree
19 complete relief.'" **In re Hallahan, 936 F.2d 1496, 1508 (7th Cir. 1991)**.

20 Adjudication of all related issues by the bankruptcy court does not infringe on the plaintiff's right
21 to a jury trial under the 7th Amendment. In re Choi, 135 BR at 651. Plaintiff subjected himself to the
22 equitable jurisdiction of the bankruptcy court when it filed a complaint for determination of
23 dischargeability. Id. at 652. Dischargeability proceedings concern whether the debtor will be granted
24 the protection and benefits of bankruptcy and are therefore integral to the restructuring of the debtor-
25 creditor relationship. Hooper, 112 BR at 1012. A creditor that subjects itself to the equitable power of
26 the bankruptcy court loses its right to a jury trial in actions that are "integral to the restructuring of the
27 debtor-creditor relationship." Langenkamp v. Culp, 111 S. Ct. 330, 331 (1990).